

NUTRL018 RA

# PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**In re Reissue Application for Reissue of**

**Applicant : Mark F. McCarty**

**U.S. Patent No. : 5,929,066**

**Appl. No. : 09/110511**

**Granted : July 27, 1999**

**For : CHROMIUM/BIOTIN  
TREATMENT OF TYPE II  
DIABETES**

## **REISSUE DECLARATION**

**Assistant Commissioner for Patents**  
**Washington, D.C. 20231**

**Dear Sir:**

**As the below named Applicant, I hereby declare that:**

**My residence, Post Office Address and Citizenship is as stated below next to my name.**

I believe that I am the original and first inventor of the invention described and claimed in the above-identified patent and of the invention described and claimed in the attached specification. I have reviewed and understand the content of the attached specification including the claims, as well as the claims referred to in this declaration. I acknowledge my duty to disclose information of which I am aware which is material to patentability as defined in 37 C.F.R. 1.56.

I believe that my original U.S. Patent No. 5,929,066, is wholly or partly inoperative or invalid by reason of the patentee claiming more or less than the patentee had the right to claim in the patent. Specifically, Applicant requests reissue of the above-referenced patent in order to add

Appl. No.

: 09/110511

Claims 11 and 12 which do not require both a reduction in hyperglycemia and the stabilization of the serum glucose level in an individual. Additionally, Applicant requests reissue of the above-referenced patent in order to add Claims 12-22 and 24 that exclude compositions having other active blood glucose serum ingredients. Claims 23 and 24 provide ranges of chromium as chromic tripicolinate and biotin selected together to provide a greater than additive effect.

All errors being corrected in the reissue application up to the time of filing of this declaration, arose without any deceptive intention on the part of the Applicant/Patentee.

Please use Customer No. 20,995 for all communications.

I have assigned the entire right, title and interest to said United States Letter Patent 5,929,066 to Nutrition 21, as evidenced by an assignment recorded in the records of the United States Patent and Trademark Office at Reel 9304, Frame 0982.

All statements made herein of their own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: 7/23/01

By:



Mark F. McCarty

Citizenship:

United States

Post Office Address: 811B Nahant Court

San Diego, California 92109

S:\DOCS\LD\LD-1453.DOC  
070601

JUL 14 2000

BILL JONES, Secretary of State

**AGREEMENT OF MERGER**

This Agreement of Merger is entered into as of January 1, 2000, by and between NUTRITION 21, LLC, a New York limited liability company ("LLC"), SELENE SYSTEMS, INC. , a California corporation ("Selene"), J. BIE ENTERPRISES, INC. , a California Corporation ("JB"), NUTRITION 21, a California limited partnership ("N21") and AMBI INC. ("AMBI"). Selene, JB and N21 are sometimes referred to individually as a "Merging Entity" and collectively as the "Merging Entities."

1. Surviving LLC is a limited liability company organized under the laws of the State of New York.

2. Selene is the general partners of N21. JB is a limited partner of N21. AMBI owns all of the capital stock of Selene and of JB, and also directly owns, as a limited partner, the entire partnership interest in N21 which it does not own indirectly through Selene and JB. AMBI is also the sole member of LLC.

3. Each Merging Entity shall be merged into LLC.

4. As a result of the Merger, AMBI's interest in the Merging Entities shall be converted into its interest as the sole member of LLC. It is understood that since N21 is merging into LLC, AMBI's limited partnership interest in N21 will also be converted into a membership interest in LLC.

5. The name of the Surviving LLC is NUTRITION 21, LLC.

6. The officers and directors of Merging Entity shall, from time to time, as and when requested by Surviving LLC, execute and deliver all such further documents and instruments and take such further action necessary or desirable to carry on the intent and purposes of this Agreement.

7. No changes are necessary in the Articles of Organization or Operating Agreement of the Surviving LLC.

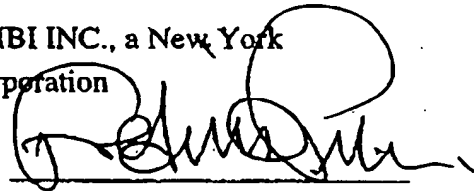
8. This Merger shall be effective as of the later of the effective date of filing of the Certificate of Merger in the office of the California Secretary of State, or the

effective date of filing of the Certificate of Merger in the Department of State of New York.

9. This Merger has been approved on behalf of the Surviving LLC by its sole member, by N21 by its general partner and all of its limited partners, and on behalf of each Merging Entity by its board of directors and all of its shareholders.


IN WITNESS WHEREOF, the undersigned have caused this Agreement of Merger to be executed as of the date first set forth above.

AMBI INC., a New York  
Corporation

By:   
Fredric D. Price, President

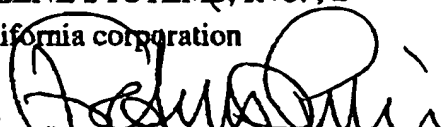
By:   
Benjamin T. Sporn, Secretary

NUTRITION 21, LLC, a New York  
limited liability company

By:   
Fredric D. Price, President

By:   
Benjamin T. Sporn, Secretary

SELENE SYSTEMS, INC., a  
California corporation

By:   
Fredric D. Price, President

By:   
Benjamin T. Sporn, Secretary

0901242-072401

J. BIE ENTERPRISES, INC., a  
California Corporation

By: 

Fredric D. Price, President

By: 

Benjamin T. Sporn, Secretary

NUTRITION 21, a California  
limited partnership

By: SELENE SYSTEMS, INC., its  
general partner and a California  
corporation

By: 

Fredric D. Price, President

By: 

Benjamin T. Sporn, Secretary

091242-0724101

Application No.: Unknown  
Filing Date: Herewith

PATENT  
Client Code: NUTRI.018CPI  
Page 1

### ASSIGNMENT

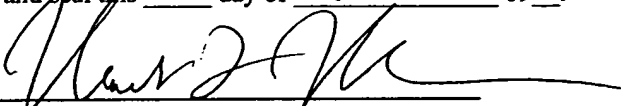
WHEREAS, I, Mark F. McCarty, a United States citizen, residing at 811B Nahant Court, San Diego, CA 92109, have invented certain new and useful improvements in a CHROMIUM/BIOTIN TREATMENT OF TYPE II DIABETES for which I have executed an application for Letters Patent in the United States, on even date herewith;

AND WHEREAS, NUTRITION 21 (hereinafter "ASSIGNEE"), a California Limited Partnership, with its principal place of business at 1010 Turquoise Street, Suite 335, San Diego, CA 92109, desires to acquire the entire right, title, and interest in and to the said improvements and the said Application:

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) to me in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, I, the said inventor, do hereby acknowledge that I have sold, assigned, transferred and set over, and by these presents do hereby sell, assign, transfer and set over, unto the said ASSIGNEE, its successors, legal representatives and assigns, the entire right, title, and interest throughout the world in, to and under the said improvements, and the said application and all divisions, renewals and continuations thereof, and all Letters Patent of the United States which may be granted thereon and all reissues and extensions thereof, and all rights of priority under International Conventions and applications for Letters Patent which may hereafter be filed for said improvements in any country or countries foreign to the United States, and all Letters Patent which may be granted for said improvements in any country or countries foreign to the United States and all extensions, renewals and reissues thereof; and I hereby authorize and request the Commissioner of Patents of the United States, and any Official of any country or countries foreign to the United States, whose duty it is to issue patents on applications as aforesaid, to issue all Letters Patent for said improvements to the said ASSIGNEE, its successors, legal representatives and assigns, in accordance with the terms of this instrument.

AND I HEREBY covenant and agree that I will communicate to the said ASSIGNEE, its successors, legal representatives and assigns, any facts known to me respecting said improvements, and testify in any legal proceeding, sign all lawful papers, execute all divisional, continuing and reissue applications, make all rightful oaths and generally do everything possible to aid the said ASSIGNEE, its successors, legal representatives and assigns, to obtain and enforce proper patent protection for said improvements in all countries.

IN TESTIMONY WHEREOF, I hereunto set my hand and seal this 30<sup>th</sup> day of June 1998

  
Mark F. McCarty

STATE OF California  
COUNTY OF San Diego ss.

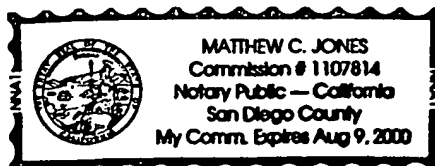
On June 30, 1998, before me, Matthew C. Jones, personally appeared Mark F. McCarty personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity(ies), and that by his signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[SEAL]

Signature

S:\DOCS\NSB\NSB-1709.DOC  
062398



NUTRI.018 RA

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Reissue Application for Reissue of:

Applicant : Mark F. McCarty  
U.S. Patent No. : 5,929,066  
Issued : July 27, 1999  
Appl. No. : 09/110,511  
For CHROMIUM/BIOTIN  
TREATMENT OF TYPE  
II DIABETES

**ASSENT OF ASSIGNEE TO REISSUE AND  
STATEMENT UNDER 37 CFR 3.73(b)**

The undersigned (whose title is supplied below) is empowered to act on behalf of the assignee, NUTRITION 21, LLC ("Assignee"), a New York Limited Liability Company, with its principal place of business at 4 Manhattenville Road, Purchase, NY 10577.

Assignee hereby assents to the accompanying application for reissue of the above-identified letters patent.

In accordance with 37 CFR 3.73(b), Assignee represents that it is the assignee of the entire right, title and interest in the above-identified letters patent by virtue of a merger with the owner of record which received an assignment from the inventor of said letters patent. The assignment from the inventor to the owner of record is recorded in the U.S. Patent and Trademark Office at Reel 9304, Frame 0982, copy attached. The agreement of merger between the owner of record and the assignee is attached herewith.

I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the like so made are

PATENT  
Docket No.: NUTRL018 RA  
Date: July 23, 2001

punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of the application or patent issuing therefrom.

July 23, 2001  
Date

Benjamin T. Sporn  
Typed or printed name

  
Signature

Senior Vice President and Secretary  
Title

S:\DOCS\UL\ULD-1503.DOC  
072001

09912472-072401